IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.59 of 2001

Reserved on 4.12.2007

Date of decision 7.12.2007

State of H.P. Appellant

Versus

Parkash Chand and others Respondent

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.M.A.Khan Deputy Advocate General.

For the respondents: Mr.T.S.Chauhan, Advocate,
for respondents No.1 and 2.

Rajiv Sharma,J.

The respondents were accused in Case No.157/2 of 1998 and they were prosecuted under Sections 452, 354, 504 and 506 read with section 34 of the I.P.C. in the court of Judicial Magistrate Ist Class, Bilaspur and were acquitted on 10.8.2000. The State has filed the present appeal against the acquittal of the respondents.

The brief facts as projected in the judgment of the trial court are that complainant Smt.Fullan Devi resident of village Beri Rajadian and her husband is working as fitter in B.B.M.B. Slapper. On 28.5.1998 when she was coming back to her house, the son of Lala Ram told her that accused persons were giving beatings to her daughters. When she reached her house she saw her two daughters Meera and Sunita were weeping and running. She was told by her daughter Sunita that during the day time at about 5.30 p.m. when she was cleaning the utensils in their courtyard the accused Parkash Chand entered into the kitchen and other accused

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[1] Whether reporter of local papers is allowed to see the judgment? No.

Rajesh had bolted the door of the kitchen from the outside. Accused Parkash Chand caught hold of Sunita and other daughter of the complainant and started using criminal force with intention to outrage her modesty. Then Sunita and her sister Meera raised an alarm then accused Rajesh opened the bolt of the door and both accused ran away from the house. The matter was reported to the Police by Nand Lal telephonically and FIR Ex.PW10/A was registered against the accused persons.

The prosecution in order to prove its case had examined 11 witnesses in support of its case and thereafter the statements of accused persons under Section 313 Cr.P.C. were recorded. The trial court acquitted the accused on 10.8.2000, hence this appeal against their acquittal.

Mr.M.A.Khan, learned Deputy Advocate General had strenuously argued that the prosecution has proved the charge against the accused. He then contended that the trial court has not correctly appreciated the evidence led by the prosecution which has led to grave miscarriage of justice. Mr.T.S.Chuahan, learned counsel appearing for the respondents had supported the judgment of the trial court dated 10.8.2000.

I have heard the learned counsel for the parties and have gone through the record of the case carefully.

The incident is dated 28.5.1998. Complainant Smt. Fullan Devi has appeared as PW-1. She did not remember the date and month of the incident. Kumari Sunita appeared as PW-2 and she also did not remember the date, time and month of the year in which the incident took place. She had admitted that the accused persons had not given any blow of sickle or drat to her. Kumari Meera Devi appeared as PW-3 had admitted that when the accused bolted the door from the outside she did not raise any noise. In normal circumstances when the accused had entered into their house she was bound to raise an alarm. Kumari Sunita and Kumari

Meera Devi had deposed that they went to the house of their uncle to narrate the incident.

PW-6 Dandu Ram had given a different version and has stated that he himself came to the spot after hearing the noise while he was working in his field. He has also admitted that Smt.Fullan Devi complainant is wife of his brother. PWs, 1, 2, 3, 4 and 6 are closely related with each other. Their statements have to be considered carefully since they are interested witnesses. Similarly, PWs 4, 5, 6 and 9 were not eye witnesses of the case. It has also come in the evidence that there is a dispute with regard to the property. There are material discrepancies in the statements made by all the witnesses which cannot be reconciled with each other.

The trial court has neither misread nor mis-appreciated the evidence led by the parties. Consequently, the judgment passed by the trial court calls for no interference. The appeal is accordingly dismissed. The bonds furnished by the accused are discharged.

December 7,2007(g) **(Rajiv Sharma), J.**